IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.267 OF 2002.

Vithal Mundeorao Khemkar : Appellants.

versus

Maharashtra Housing and Area
Development Authority & Anr. : Respondents.

Mr.S.J.Ghogare for the appellant.
Mr.S.S.Redij for respondent No.2.
Mr.V.B.Sakhare AGP for Respondent NO.1.

CORAM : D.G.DESHPANDE,J.

DATED : 14th June 2005.

ORAL ORDER

1. Heard advocates for the appellant and the MHADA. The plaintiff has filed a suit in respect of a room contending that he is an occupier of the same and the MHADA should have allotted the room to him. He, alternatively, prayed that he

may be permitted to jointly occupy the room along with respondent No.2. His suit came to be dismissed. Hence this appeal.

2. The counsel for the MHADA pointed out that the mother of respondent No.2 and sister of plaintiff, was the original allottee. After her death, respondent No.2 was allotted and the portion that was occupied by the plaintiff was the part of a flat or tenement where there were two rooms. Therefore, the plaintiff had no independent right.

3. Counsel for the plaintiff urged that since the plaintiff was paying the rent, he gets protection under the Act. This cannot be accepted as rightly done by the trial Court. The plaintiff has no right in the premises. The allotment was in favour of respondent No.2 through his mother and original allottee of the new premises. Therefore, the suit was rightly dismissed. The contention of the plaintiff that the alternative prayer, that joint occupation should have been accepted, cannot also be considered because joint occupation of the plaintiff along with respondent No.2 cannot be

foisted upon respondent No.2. If there are 4/5 occupants, everybody cannot be given allotment in the newly constructed building and the allotment has to be to the original occupant. There is no merit in this appeal. The same is dismissed.

[D.G.DESHPANDE]

14/06/2005 JUDGE.